



December 2, 2013

South Park Ranger District
ATT: Kristen Meyer
P.O. Box 219
Fairplay, CO 80440

RE: Badger Flats Habitat Improvement Project

Dear Ms. Meyer:

Please accept this correspondence as the comments of the Organizations with regard to the above Project. Prior to addressing the specific merits of the Proposal, we believe a brief summary of each Organization is needed. The Colorado Off-Highway Vehicle Coalition ("COHVCO") is a grassroots advocacy organization of approximately 2,500 members seeking to represent, assist, educate, and empower all OHV recreationists in the protection and promotion of off-highway motorized recreation throughout Colorado. COHVCO is an environmental organization that advocates and promotes the responsible use and conservation of our public lands and natural resources to preserve their aesthetic and recreational qualities for future generations.

The Trail Preservation Alliance ("TPA") is a 100 percent volunteer organization whose intention is to be a viable partner, working with the United States Forest Service (USFS) and the Bureau of Land Management (BLM) to preserve the sport of trail riding. The TPA acts as an advocate of the sport and takes the necessary action to insure that the USFS and BLM allocate to trail riding a fair and equitable percentage of access to public lands. For purposes of these comments, COHVCO and TPA will be referred to as the Organizations.

The Organizations have serious concerns regarding several aspects of the Proposal, including possible impacts from active litigation against the Pike San Isabel forest that may directly impact much of the analysis and review of routes that would have to be undertaken. This is

litigation that the Organizations have been granted intervener status in and are now actively assisting the Forest Service in defending. The Organizations vigorously assert that this matter must be resolved prior to the proposal moving forward.

The Organizations are also concerned that much of the Proposal does not appear to be relying on best available science regarding the movement of wildlife in the Proposal area. Colorado Parks and Wildlife has provided extensive site specific analysis of wildlife issues in the planning area. While there are passing references to trail usage in the area in this analysis, development of adjacent private lands and military bases is specifically identified as the major concern. This site specific analysis also specifically states that the elk and deer herds in the planning area are currently at 2-3x the target population for the area. The Organizations believe providing a quality wildlife habitat is a critical use of public lands, but providing such a habitat entails addressing the actual threats and challenges to that habitat. Arbitrarily managing an issue that is not a threat to the habitat will never improve the quality of the habitat for the species to be protected. While there may be management issues in the proposal area, the Organizations do not believe they are of such a scale as to warrant the preparation of documentation for mitigation as much of the issues can be addressed through annual management and maintenance.

The Organizations are also concerned that the Proposal area has been heavily impacted by the recent mountain pine beetle epidemic. The large amount of dead trees in the planning area from this impact may also be directly impacting wildlife movements, as areas of cover that have been historically provided, are no longer available. The large number of dead trees additionally significantly increase the fire risk in the area, and as noted in CPW site specific research, burn areas make poor quality wildlife habitat. The Organizations will note that areas that have been remediated for beetle impacts often return to a basically healthy state at a much more rapid pace and return to a significantly improved quality of habitat than unremediated area. This issue simply is never addressed in the scoping or how the proposal would improve the ability to remediate this area in the future. The Organizations believe this proposal will not improve the ability to mitigate forest health issues.

1. Current litigation involving the South Park Ranger District must be addressed.

On January 28, 2011, the USFS Pike/San Isabel National Forest and Supervisor Jerry Marr were sued by the Wilderness Society, Great Old Broads for Wilderness, Wildlands CPR, Quiet Use Coalition and the Center for Native Ecosystems in Federal District Court for Colorado.¹ This suit specifically challenged the placement of over 500 miles of routes on the MVUM of all six ranger districts in the PSI, including the South Park Ranger District. A copy of this complaint has been

included with these comments for your reference. At this stage of the litigation, the Organizations do not believe the full extent of the routes and impacts has been fully identified by the Plaintiffs. Allegations in the suit involved a wide range of issues related to MVUM development, including but not limited to, the inclusion of historical routes on an MVUM, violations of the Administrative Procedures Act, the Endangered Species Act, the National Forest Management Act and NEPA. The Organizations believe that the PSI has stopped all travel management in the Forest until such time as this litigation can be resolved.

The Organizations sought to intervene in this matter to assist the Forest Service in the defense of this matter. Since being granted status as an intervener, the Organizations have been active partners in defending this matter, and clearly have a vested interest in resolving this matter. The Organizations have to disagree with the position asserted in the scoping letter that the Proposal does not affirm or deny the existence of system roads at this time. The Organizations believe the Proposal does nothing but affirm or deny the existence of routes in the area, and the proposal cannot move forward without such a determination.

The Organizations are very concerned that the existence of many routes in the South Park Ranger district have been directly challenged and the Court has not provided guidance regarding the sufficiency and validity of the current MVUMs for the District. As such this project will not have a proper standard for the determination of what is and what is not a designated route in the planning area. This information is critical to the project and identification of illegal or unauthorized routes and is currently unavailable during the pendency of this litigation.

The Organizations also note that if authorized and unauthorized routes cannot be identified in the planning area, the identification of administrative routes and routes that may not currently be open to the public and are held in reserve also cannot be identified. It is the Organizations' vigorous assertion this Proposal is exceptionally premature given this litigation and will be relying on a determination process for the roads and trails in the proposal area that has been directly challenged in the litigation and will be addressing numerous routes that may be specifically challenged in the litigation.

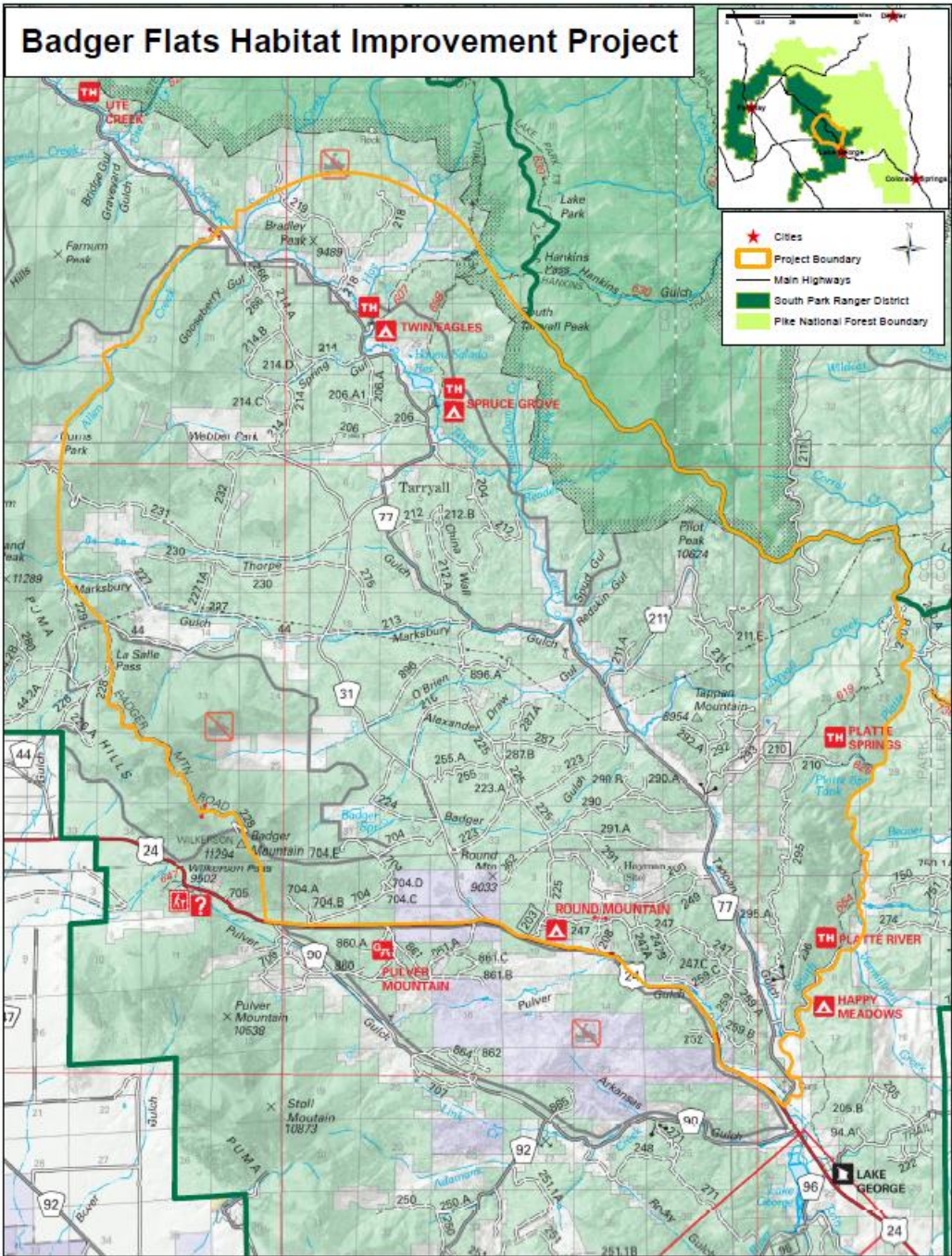
2a. Best available science in the planning area has not been relied on in the Proposal.

The Organizations believe the asserted purpose and need for the project conflicts with best available science for the management of deer and elk herds in the planning area. Colorado Division of Parks and Wildlife consistently prepares site specific analysis of deer and elk herds throughout the state, addressing herd size, sex ratios and threats or challenges to the management of that herd. The Organizations assert this research is clearly best available

science on these issues, given the site specific nature of its analysis and peer review process that is undertaken by CPW prior to the adoption of these plans by the CPW Commission.

The Organizations believe that identification of the proper GMU for the proposal area is critical to applying this research. The Organizations have serious concerns that the proper plan has not been relied on the development of the proposal, as CPW has recently released a new Herd Management plan for the GMU south of the planning area (E23), while the Herd Management plan for the Proposal area (E18) is several years older. These concerns are based on the proximity of timing in the release of the new E23 Herd Management Plan and this proposal and the fact that several sections of the scoping letter appear to have been directly cut and pasted from the E23 plan into the scoping letter. While the Organizations are aware the GMU issues may be similar, this is simply not a proper or credible basis for planning.

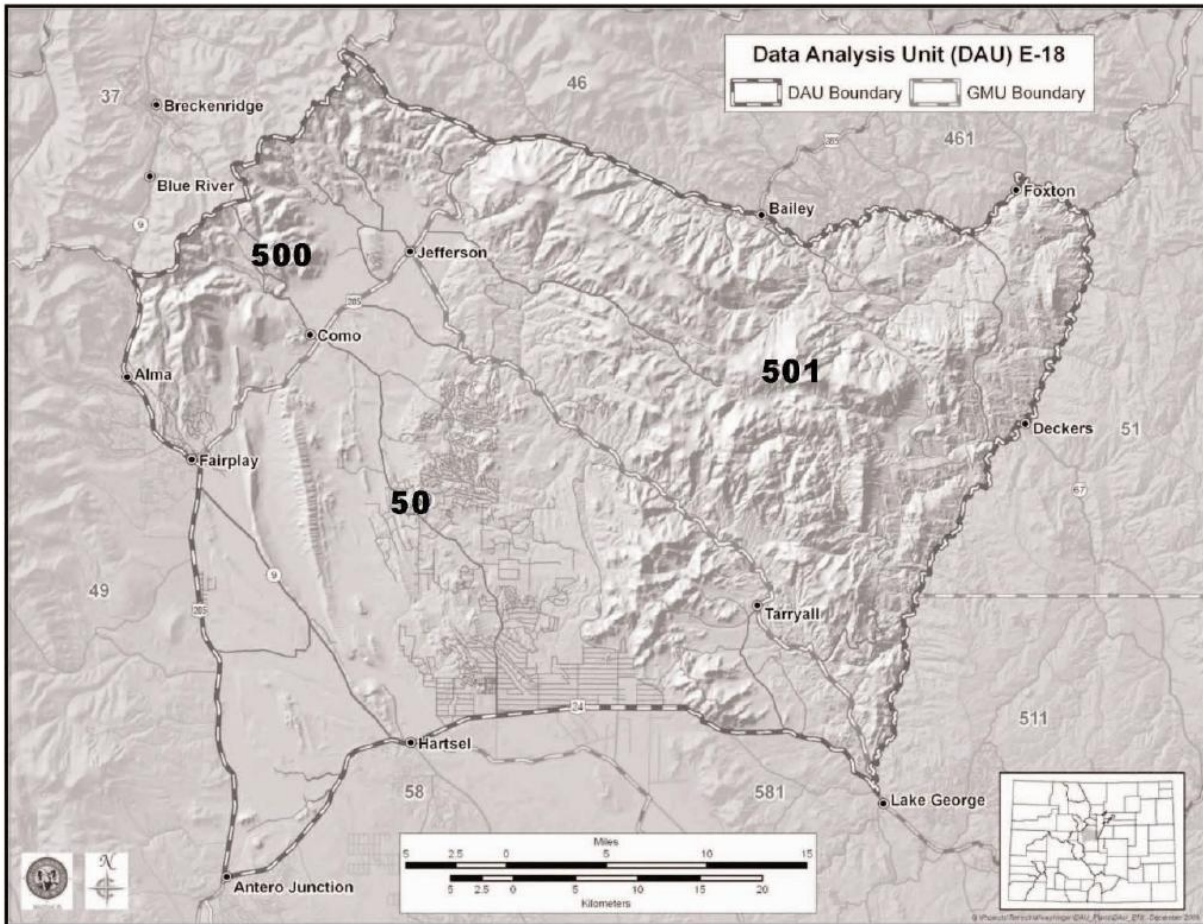
The Organizations believe a brief comparison of the proposal area and the GMU boundaries will clarify this concern as the proposal boundaries almost entirely overlap the E18 planning and analysis boundaries.



² http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5439315.pdf

By comparison, the E18 planning area is managed under the following boundaries:

Figure 5. E-18 Map.



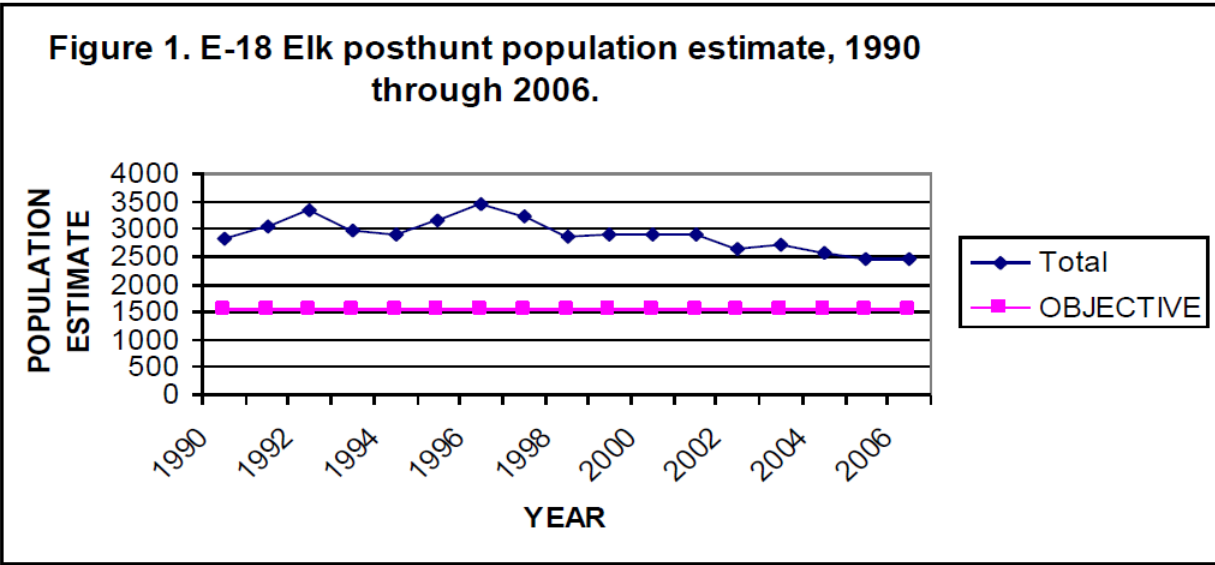
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Given the overlap of the planning area and proposal area, the Organizations believe there can be no argument that E18 analysis and research is the proper planning tool to be relied on for the development of mitigation in the proposal area.

2b. The current elk population in the E18 planning area is 2-3x the CPW target for the area.

Once the proper planning area is identified, a review of this plan reveals that CPW specifically concludes the current elk herd population is 2-3x the target population for the planning area. This herd has remained at 2-3x the population goal for more than 15 years. The E18 Herd Management Plan provides the following graphic representation of the herd size:

³ See, CPW Kenosha Pass Elk Management EAU 18 plan, September 2007 at pg 10.



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The Organizations must note that the E23 Herd Management plan notes the elk herd in that planning area is also holding at 2-3x the target population for the planning area. Given the exceptional size, health and historically stable nature of the herd size, the Organizations have to question the validity of any assertion that habitat quality is a problem for this herd. An assertion that route closures are necessary to protect herd populations must also take into account the herd size is 2-3x what it should be for the planning area. The Organizations do not believe this has occurred in the Proposal.

2c. The threats and issues identified in the E-18 Herd Management Plan do not bear any relationship to the management actions in the Proposal.

The E18 Herd Management Plan also provides a detailed analysis of the threats and challenges to the elk herd in the area. These threats and challenges are summarized as follows:

“Changes in land use and conversion of rangeland to residential subdivision have negatively impacted the carrying capacity of the area as well as impacting hunter access and harvest success. While there is adequate forage in most years for a larger population (4,500) than currently exists in the DAU (2,400) based on a habitat assessment model developed for Colorado’s HPP program, localized conflicts with agricultural producers still occur. There is relatively little hay production in this DAU and no game damage claims have been paid, but complaints of forage competition and fence damage have increased in the last two years.”⁵

⁴ See, EAU 18 Herd Management Plan at pg 2
⁵ See, EAU 18 Herd Management Plan at pg 3.

The Organizations would also note that camping and motorized recreation in the E18 planning area is specifically addressed in the E18 herd plan, which clearly states:

“Multiple uses of the public lands in the DAU include heavy recreational use of both National Forest and BLM lands throughout the year. Recreational activities include hiking, camping, horseback riding, mountain biking, ATV and snowmobile riding, four wheeling, wildlife watching, hunting and fishing. Additionally, most of the public lands have seasonal grazing allotments.”⁶

The Organizations believe it is significant to note that while this usage was specifically addressed in the E18 Herd Management Plan, at no point is this usage even identified as a management concern in the E18 plan. This lack of concern regarding high levels of recreational usage must be taken into account in the Proposal, which proposes to manage these uses to address a non-existent threat to the animals in the area.

It is significant to note that the E-23 Herd Management plan, which appears to be a significant factor erroneously relied on for the development of the Proposal given the large amount of materials that have directly transferred from the plan to the scoping letter, notes a wide range of factors, including the Hayman burn area, large amounts of private lands development and military bases in habitat areas as significant factors impacting the elk population.⁷ The E23 plan does provide more analysis of recreational usage of habitat areas, however it is significant to note that at no point is motorized recreation identified as a disproportionate impact. Rather the E23 speaks to all recreational usage of habitat. If all recreational usage of habitat is a concern, all recreational usage should be managed under multiple use standards while protecting elk habitat. However that management becomes problematic as precluding all recreational usage will never offset development of adjacent lands and limiting hunting access would reduce the effectiveness of one of the major tools the CPW is using to attempt to reduce the elk population in that area, which is hunting. Precluding recreational usage for the benefit of elk habitat is simply arbitrary and conflicts with federal law.

2d. Elk response to hunting pressure is identified as a significant factor moving animals off public lands in the E18 plan.

The Organizations are also very concerned that seasonal management issues, such as hunting pressure, are now asserted to be properly relied on for management decisions that impact the year round public access to the planning area. This is simply not acceptable, as the seasonal hunting usage in the planning area has consistently found to obtain a much higher level of

⁶ See, E18 Herd Management plan at pg 13.

⁷ See, E23 Herd Management Plan at pg v.

wildlife response than the use of the area for non-hunting activity the rest of the year. This is an issue that must also be addressed if there is a desire to maintain wildlife on public lands. The E18 Herd Management plan addresses Elk response to hunting pressure as a major issue in the planning area. This concern is summarized as follows:

“There has been a significant loss of elk habitat due to changes in land use. Much of the conversion from agricultural to residential use has occurred in winter and transitional ranges which are critical in determining the carrying capacity of the area. Impacts from development include direct loss of habitat capability as well as the loss of the ability to hunt those lands for elk population control. Elk quickly learn to take advantage of areas closed to hunting. Future conversions of agricultural and open lands to residential uses will further reduce the ability of this DAU to support elk.”⁸

Elk response to hunting pressure is an issue that has been extensively researched and consistently found to more directly impact elk movement when compared to other factors such as recreational usage of roads and trails in the habitat areas. Researchers have specifically concluded that elk move away from hunters without regard to the number of roads in the area, which has been summarized as:

“After eliminating the effects of primary and secondary roads, elk were farther from primitive roads than random points within the study area for all 10-day intervals except 1-10 October (Table 2). Elk were farther from secondary roads through the period of 1-10 October after which elk dispersion patterns were indistinct relative to secondary roads. Elk locations relative to primary roads were similar to those for primitive roads in that elk were increasingly closer to primary roads during the 10-day intervals from 22 August to 10 October. After 11 October, the average distance of elk to primary roads increased through 30 November.”⁹

Even in comparatively unroaded areas on the planning area, elk still move to private lands in response to hunting pressure commencing the open of hunting seasons. The Organizations have to believe that if these studies were reviewed as part of the Proposal development process, these findings would have immediately brought into question any assertion that road closures in travel management would address elk movement in response to hunting in any

⁸ See, E18 Herd Management Plan at pg 21.

⁹ Rumble, Mark A; Benkobi, Lahkdar; Gamo, Scott R; 2005. *Elk Responses to Humans in a Densely Roaded Area*; Intermountain Journal of Sciences. 11(1-2); 10-24 @ pg 17-18.

meaningful manner. Studies addressing elk herds inhabiting the public lands in Colorado have specifically concluded that:

“We used the difference in the model averaged predicted proportion of elk on private land immediately before and after opening day to estimate the direct effect of opening day of hunting. Elk on private land increased 8-17% at the opening of early season hunting.”¹⁰

The Organizations believe that this analysis must be the first tool utilized to address the response of elk to hunting pressure issues in the proposal area and travel management should not be the first tool used to try to address off trail non-OHV related management issues. As extensively discussed in the E18 Herd Management Plan, CPW has tried a variety of different hunting management practices in the planning area to try and reduce the elk overpopulation, with varying levels of success. While the Organizations are sympathetic to these management challenges, the Organizations do not believe the failures in managing these issues justifies moving to management of issues that pose a significantly lower level of threat than the response to hunting pressure.

3. HPP input regarding the usage of public lands remains governed by multiple use mandates for that public land.

The Organizations will note that the E18 Herd Plan makes several references to recommendations from the Habitat Partnership Program with CPW. These references are summarized as follows:

“The South Park Habitat Partnership Program (HPP) committee, in cooperation with the Colorado Division of Wildlife (CDOW) and United States Forest Service (USFS), is actively promoting habitat improvements in areas that can support more elk or where elk use is not problematic. The goal of this effort is to move as much of the elk use as possible to habitats on public lands where there are no or very limited conflicts.”¹¹

The Organizations will note that these HPP recommendations are not a replacement for the multiple use mandates for the management of public lands. The Organizations would also note that while wildlife managers may see the use of public lands as an area where there are little to

¹⁰ Connor, White & Freddy; *Elk Movement in response to early-season hunting in Northwest Colorado*; The Journal of Wildlife Management; Volume 65, Number 4; October 2001@ pg 933.

¹¹ See, E18 Herd management plan at pg 4.

not conflicts, the Organizations believe this proposal is the direct result of conflicting multiple uses on this public land. Arbitrarily accepting these type of recommended usages is neither acceptable or legal.

4. Impacts of the mountain pine beetle must addressed in habitat effectiveness analysis.

The Organizations are also aware that much of the Proposal area has been heavily impacted by the mountain pine beetle epidemic. It has been the Organizations experience that areas impacted by the pine beetle epidemic experience a significant decline in the quality of wildlife habitat in the areas. This position has been supported by a significant body of scientific research.¹²

It has been the Organizations experience that private land owners have been far more effective at mitigating the impacts of the mountain pine beetle on private lands than the federal lands managers. Given that wildlife will move to the mitigated areas as it is superior quality habitat, the Organizations believe this factor must also be addressed in the Proposal. This issue simply has not been addressed. The Organizations vigorously assert that the complete closure of the planning area, which we are aware is outside the scope of the proposal, will never be sufficient to counter the huge impact that the mountain pine beetle epidemic has had on the planning area. The Organizations vigorously believe that planning must rely on all best available science for the planning area, and the current Proposal simply has not done this as the proposed management starts with the position that closures and recreation can be managed to improve habitat to levels where wildlife remains on public lands. The Organizations believe this position is simply erroneous.

Conclusion

The Organizations believe there are significant issues with the current litigation that is addressing trails usage and planning on the South Park Ranger district that must be resolved prior to the Proposal moving forward. Resolution of these issues is critical as the current proposal may impact the litigation and would be making determinations and reviews of legal or user created routes that could be impacted by any verdict from the litigation. This must be avoided.

¹² See, Chan-McLeod, A.C.A. 2006. A review and synthesis of the effects of unsalvaged mountain-pine-beetle-attacked stands on wildlife and implications for forest management. BC Journal of Ecosystems and Management 7(2):119–132. url: http://www.forrex.org/publications/jem/ISS35/vol7_no2_art12.pdf

In addition to the concerns regarding litigation, the Organizations vigorously assert that the Proposal fails to address best available science and the fact that elk herds in the Proposal area are 2-3x the target populations for the these herds. The populations have historically remained at these levels, making any assertion of poor habitat quality problematic at best. In addition to failing to address overpopulations of elk in the planning area, the Proposal seeks to manage recreational access and usage in the area, despite best available science specifically concluding that this usage is not a priority issue in the Proposal area. This type of arbitrary management is neither acceptable or legal for the management of public lands.


If you have questions please feel free to contact Scott Jones at 508 Ashford Drive, Longmont, CO 80504. His phone is (518)281-5810.

Sincerely,



D.E. Riggle
Director of Operations
Trails Preservation Alliance

Scott Jones, Esq.
COHVCO Co-Chairman
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